

SENATE BILL 722

By Massey

AN ACT to amend Tennessee Code Annotated, Title 36
and Title 37, relative to children.

WHEREAS, the legislature finds that:

(1) Approximately one in fifteen children in the United States is exposed to domestic violence each year;

(2) Most child abuse in America is perpetrated in the family and by a parent, and intimate partner violence and child abuse overlap in the same families at rates between thirty and sixty percent. A child's risk of abuse increases after a perpetrator of partner violence separates from a domestic partner, even when the perpetrator has not previously directly abused the child. Children in the United States who have witnessed intimate partner violence are approximately four times more likely to experience direct child maltreatment than children who have not witnessed intimate partner violence;

(3) More than seventy-five percent of child sexual abuse in America is perpetrated by a family member or a person known to the child. Data from the United States department of justice shows that family members are forty-nine percent, or almost half, of the perpetrators of crimes against child sexual assault victims younger than six years of age;

(4) Federal scientific research suggests a child's exposure to an abuser is among the strongest indicators of risk of incest victimization. One national study found that female children with fathers who are abusers of their mothers

were six and one-half times more likely to experience father-daughter incest than female children who do not have abusive fathers;

(5) Child abuse is a major public health issue in the United States. Total lifetime financial costs associated with just one year of confirmed cases of child maltreatment, including child physical abuse, sexual abuse, psychological abuse, and neglect, result in one hundred twenty-four billion dollars in annual costs to the economy of the United States, or approximately one percent of the gross domestic product of the United States;

(6) Empirical national research indicates that family courts regularly discount allegations of child physical and sexual abuse when those allegations are raised in child custody cases;

(7) Empirical national research shows that alleged or known abusive parents are often granted custody or unprotected parenting time by family courts. According to this research, approximately one-third of parents alleged to have committed child abuse took primary custody from the protective parent reporting the abuse, placing children at ongoing risk;

(8) Researchers at the center for judicial excellence have documented more than eight hundred sixty-one child murders in the United States since 2008 committed by a divorcing or separating parent. More than one hundred of these child murders are known to have occurred after a court ordered the child to have contact with the dangerous parent over the objection of a safe parent or caregiver;

(9) Scientifically unsound theories that treat abuse allegations of mothers as likely false attempts to undermine fathers are frequently applied in family court to minimize or deny reports of abuse of parents and children. Many experts who

testify against abuse allegations lack expertise in the relevant type of alleged abuse, relying instead on unsound and unproven theories;

(10) Judicial officers presiding over custody cases involving allegations of child abuse, child sexual abuse, and domestic violence in Tennessee are not required to receive comprehensive training on these subjects. It is incorrect to claim Tennessee is training when Tennessee does not have any standards, minimum hourly requirements, or strong curriculum standards to ensure the training actually meets its goals;

(11) Ensuring the health, safety, and welfare of children shall be the court's primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children;

(12) Children have the right to be safe and free from abuse and the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child;

(13) Children should have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and parents should share the rights and responsibilities of child rearing in order to affect this policy, except when the contact would not be in the best interests of the child;

(14) When the policies set forth in subdivisions (12) and (13) are in conflict, a court's order regarding custody or visitation must be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members are paramount; and

(15) The sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative should not be considered in determining the best interests of the child; and

WHEREAS, the paramount concern of all child custody decisions must be to provide complete health and safety when determining the best interests of the children; and

WHEREAS, it is the intent of the legislature to:

(1) Prevent child abuse and situations that have been shown to increase the likelihood children will engage in harmful behaviors. Separating children from the primary attachment figure, which has been shown to increase the risk of depression, low self-esteem and suicide in children , and witnessing domestic violence, which has been shown to interfere with the ability of children to reach developmental milestones and increase the likelihood children will engage in a wide range of harmful behaviors when older, are common examples of situations that create a safety risk for children;

(2) Increase the priority given to child safety and health in any State court divorce, separation, visitation, paternity, child support, or order of protection proceeding affecting the custody and care of children;

(3) Strengthen the abilities of courts to recognize and adjudicate domestic violence and child abuse allegations based on valid, admissible evidence, and enter orders that prevent, protect, and minimize the risk of harm to children. Present practices are working poorly for children and one of the purposes of this law is to stop using outdated practices that are placing children in jeopardy;

(4) Ensure that professional personnel involved in cases containing domestic violence or child abuse allegations receive trauma-informed and culturally appropriate training on the dynamics, signs, and impact of domestic violence and child abuse, including child sexual abuse; and

(5) Make Tennessee eligible for additional grant funding through the United States Department of Justice's STOP Violence Against Women Formula Grant Program, as appropriated for states that meet the requirements of the federal Violence Against Women Act Reauthorization Act of 2022 (Division W of Public Law 117-103); now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as "Abrial's Law, the Keeping Children Safe from Family Violence Act."

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 6, is amended by adding the following as a new part:

36-6-701.

(a) A parent in a child custody proceeding shall not be penalized for making a good faith complaint about domestic violence or child abuse. A court shall not remove the child from a parent or other party during a child custody proceeding in order to improve a deficient relationship with the allegedly abusive other parent of a child if the parent or other party is:

(1) Competent, protective of the child, and not physically or sexually abusive; and

(2) The person with whom the child is bonded or to whom the child is attached.

(b) In a child custody proceeding in which a parent has been alleged to have committed domestic violence or child abuse, including child sexual abuse, expert evidence from a court-appointed or outside professional relating to the alleged abuse shall be admitted only if the professional possesses demonstrated expertise and clinical

experience in working with victims of domestic violence or child abuse, including child sexual abuse, that is not solely of a forensic nature.

(c) In a child custody proceeding in which a parent has been alleged to have committed domestic violence or child abuse, including child sexual abuse, the court shall consider any evidence of past sexual or physical abuse committed by the accused parent, in addition to any other relevant admissible evidence, including:

- (1) Any past or current orders of protection against the accused parent;
- (2) Arrests of the accused parent for domestic violence, sexual violence, or child abuse; and
- (3) Convictions of the accused parent for domestic violence, sexual violence, or child abuse.

(d) In a child custody proceeding, before the appointment of a guardian ad litem, evaluator, or other neutral professional, the court shall conduct an evidentiary hearing, if requested, to determine if one (1) of the parties has engaged in a pattern of domestic violence or child abuse. If the court finds probable cause of domestic violence or child abuse and the child's other parent is safe, then the court shall award full custody to the other parent. The court shall not award custody to the abusive parent, and, if the court orders visitation with the abusive parent, the visitation must be supervised by a professional. If the court does not find a pattern of domestic violence or child abuse, the finding does not prevent the court from considering additional evidence of domestic violence later in the case.

(e) In a custody proceeding, a court shall apply current, valid, evidence-based, scientific, and peer-reviewed research concerning the types of abuse alleged to help inform the court's decisions in all cases where domestic violence, child abuse, and child sexual abuse are raised during the course of custody litigation. A court shall not permit

practices or approaches that do not have scientific bases and are not accepted practice within the specialized field of practice of domestic violence, child abuse, or child sexual abuse. Professionals who engage in practices based upon such unscientific beliefs are not qualified to participate in custody cases where domestic violence, child abuse, or child sexual abuse is raised during the course of litigation.

(f)

(1) In a child custody proceeding, a court shall not order a reunification treatment, unless there is scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment. A court also shall not order a reunification treatment that is predicated on cutting off a child from a parent with whom the child is bonded or to whom the child is attached.

(2) An order to remediate the resistance of a child to have contact with an accused violent or abusive parent shall primarily address the behavior of the accused parent or the contributions of that parent to the resistance of the child before ordering the other parent of the child to take steps to potentially improve the relationship of the child with the accused parent.

(3) As used in this subsection (f), "reunification treatment" means a treatment or therapy aimed at reuniting or reestablishing a relationship between a child and an estranged, abusive, or rejected parent or other family member of the child.

36-6-702.

(a) All court personnel involved in child custody proceedings, including judges, judicial commissioners, and magistrates, shall complete at least twenty (20) hours of initial domestic violence and child abuse training, and at least fifteen (15) hours of ongoing domestic violence and child abuse training every five (5) years.

(b) The training required by this section:

(1) Applies to any professional appointed by a court during a child custody proceeding to express an opinion relating to abuse, trauma, or the behaviors of victims and perpetrators of abuse and trauma; and

(2) Does not count toward the demonstrated expertise and experience for the purpose of complying with § 36-6-701(b).

(c) The administrative office of the courts shall develop a training program that meets the requirements of this section. The training must be designed to improve the ability of courts to recognize and respond to child physical abuse, child sexual abuse, domestic violence, and trauma in all family victims, particularly children, and make appropriate custody decisions that prioritize child safety and well-being and are culturally sensitive and appropriate for diverse communities. The training program must meet all of the following requirements:

(1) Focus on domestic and sexual violence and child abuse, including the following:

(A) Child sexual abuse;

(B) Physical abuse;

(C) Emotional abuse;

(D) Coercive control;

(E) Implicit and explicit bias, including biases relating to parents with disabilities;

(F) Trauma;

(G) Long-term and short-term impacts of domestic violence and child abuse on children; and

(H) Victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;

(2) Be provided by a professional with substantial experience in assisting survivors of domestic violence or child abuse, including at least one (1) victim service provider and, if possible, a survivor of domestic violence or child physical or sexual abuse;

(3) Rely on evidence-based and peer-reviewed research by recognized experts in the types of abuse described in subdivision (c)(1); and

(4) Not include theories, concepts, or belief systems unsupported by evidence-based, scientific, and peer-reviewed research.

SECTION 3. This act takes effect July 1, 2023, the public welfare requiring it.